STATE OF MICHIGAN

COURT OF APPEALS

ARAMARK SERVICE, INC., Plaintiff-Appellant,	UNPUBLISHED August 11, 2009
v	No. 284267 Ingham Circuit Court
DEPARTMENT OF TREASURY, Defendant-Appellee.	LC No. 06-000091-MT

Before: Owens, P.J., and Talbot and Gleicher, JJ.

PER CURIAM.

In this case brought under Michigan's Single Business Tax Act (SBTA) MCL 208.1 *et seq*, repealed by 2006 PA 325, plaintiff appeals as of right from an order granting defendant summary disposition under MCR 2.116(I)(2). We reverse.

I. Facts

Plaintiff, Aramark Services, Inc., is a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania. During the time period relevant to this controversy, plaintiff conducted business within the State of Michigan. Defendant Department of Treasury is statutorily responsible for the collection of taxes under the Single Business Tax Act (SBTA), pursuant to 1975 PA 228, MCL 208.1 *et seq*. The tax in controversy is the Michigan Single Business Tax (SBT) paid by plaintiff for tax years beginning October 1, 1993 through September 30, 1998.

Plaintiff timely filed its SBT annual returns for the years in issue. On March 28, 2006, defendant issued to plaintiff a bill for taxes due, which assessed SBT of $792,198.00 and interest of $685,309.08 for the years in issue. On May 2, 2006, plaintiff paid the final assessment in full under protest.

Plaintiff wholly owns several subsidiaries. To assist its subsidiaries, plaintiff borrowed money from lenders and loaned it to its subsidiaries for their use in conducting business activity. Plaintiff paid interest to the lenders as compensation for the use and forbearance of the borrowed money. Plaintiff allocated the interest charges on the borrowed money to its subsidiaries, which paid the interest to plaintiff. The interest paid by plaintiff's subsidiaries to plaintiff was interest arising solely from the subsidiaries' use of the money borrowed by plaintiff on the subsidiaries' behalf.

Plaintiff and its subsidiaries filed a consolidated federal income tax return. The interest payments made to lenders were deducted when arriving at the federal taxable income of the consolidated group; the interest payments were allocated to plaintiff's subsidiaries in pro forma federal income tax returns prepared for plaintiff and its subsidiaries. In the final assessment, defendant included in plaintiff's SBT base the interest paid to lenders for the loans attributable to plaintiff's subsidiaries.

In ruling in favor of defendant, the trial court concluded that plaintiff, not its subsidiaries, was paying interest to the lender.

I. Standard of Review

We review a motion for summary disposition under MCR 2.116(I)(2) de novo. *Sharper Image Corp v Dep't of Treasury*, 216 Mich App 698, 701; 550 NW2d 596 (1996). We also review questions of statutory interpretation de novo. *In re MCI Telecommunications*, 460 Mich 396, 413; 596 NW2d 164 (1999). The goal of statutory interpretation is to give effect to the intent of the Legislature. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003).

III. Analysis

The SBTA is not a tax on income, but rather, a tax placed on the value-added portion of a product, which allows for certain exclusions, exemptions, and industry-specific adjustments. *ANR Pipeline Co v Dep't of Treasury*, 266 Mich App 190, 198; 699 NW2d 707 (2005). "Value added" is considered to be the increase in the value of goods and services created by whatever a business does to them between the time of purchase and the time of sale. *Id*., quoting *Trinova Corp v Dep't of Treasury*, 433 Mich 141, 149; 445 NW2d 428 (1989). "In short, a value-added tax is a tax upon business or economic activity." *Id*., citing *Trinova, supra* at 149.

SBT liability is calculated starting with the taxpayer's business income, which is also that taxpayer's federal taxable income. MCL 208.9; MCL 208.3(3). From that base, adjustments are made to increase this base amount for items paid by the taxpayer that do not reduce the value added to the product, including dividends, interest, and depreciation, but only to the extent deducted from the federal taxable base. MCL 208.9(4); *ANR Pipeline Co*, *supra* at 199. Next, adjustments are made to decrease this base amount for dividends, interest, and royalty income received by the taxpayer. MCL 208.9(7); *Id*. "These items are removed from the SBT base because, although those items represent income for federal tax purposes, they do not represent value added to the product. That is, they do not result from the use of capital by the recipient." *Id*. Under the SBTA, once these adjustments have been made, the taxpayer will be liable for tax in accordance with the adjusted tax base multiplied by the existing SBT percentage. MCL 208.31.

The question here is whether interest payments relative to loans obtained by plaintiff, on behalf of plaintiff's subsidiaries, should be included in plaintiff's SBT base, or that of its subsidiaries, where the subsidiaries were responsible for reimbursing plaintiff for the loan payment amounts.

"For ease of administration . . . the SBTA uses the federal income tax system as a reference and starting point, and through various required additions and subtractions, converts the federal tax base into a consumption-type [value-added tax] VAT base." *Mobil Oil v Dep't of Treasury*, 422 Mich 473, 497; 373 NW2d 730 (1985); MCL 208.9. The necessary adjustments are made only "*to the extent deducted [and included] in arriving at federal taxable income*." MCL 208.9(4).

Typically, a taxpayer's federal taxable income is determined based on the taxpayer's federal income tax returns, which are prepared by the taxpayer and submitted to the Internal Revenue Service. Here, plaintiff and its subsidiaries filed a consolidated federal income tax return. In accordance with federal regulations, plaintiff attached pro forma returns to its federal income tax return to differentiate the income and associated tax applicable for it and each subsidiary.[1] The parties stipulate that the interest payments were allocated to plaintiff's subsidiaries for federal income tax purposes.

The goal in statutory construction is to discern and give effect to the Legislature's intent. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). The intent of the Legislature is most reliably evidenced through the words used in the statute. *Id*. If the language in the statue is unambiguous, judicial construction is neither required nor permitted. *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005), citing *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). However, if a statute is ambiguous then judicial construction is appropriate. *Adrian School Dist v Michigan Pub School Employees Retirement Sys*, 458 Mich 326, 332; 582 NW2d 767 (1998). A statute is ambiguous "only if it 'irreconcilably conflict[s]' with another provision or when it is *equally* susceptible to more than a single meaning." *Fluor Enterprises, Inc v Dep't of Treasury*, 477 Mich 170, 177 n 3; 730 NW2d 722 (2007) (emphasis in original).

Here, considering the plain language of the statute, the Legislature did not give defendant discretion to determine whether an adjustment made under the SBTA was necessary, but instead provided under the SBTA that adjustments were to be made only to the extent deducted or included for federal tax purposes. The provisional language under MCL 208.9(4), "*to the extent deducted [and included] in arriving at federal taxable income,*" is not ambiguous. It clarifies that adjustments cannot be made unless they were first part of the taxpayer's federal taxable income.

The language in the SBTA provides for use of the taxpayer's federal taxable income as the starting point for the SBTA, implying that the Legislative relied on and accepted the internal revenue code credit and deduction regimen. Here, plaintiff filed a consolidated federal income

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[1] Federal consolidated returns are authorized under internal revenue code (IRC) section 1501, although IRC section 1502 requires income tax to be determined to clearly reflect income-tax liability. 26 USC 1501; 26 USC 1502. IRC section 482 authorizes the allocation of income and deductions between organizations where two or more organizations are owned or controlled by the same interest, and the allocation will clearly reflect the income of the organization. 26 USC 482.

tax return, as permitted by federal law. With its consolidated return, plaintiff filed pro forma returns to outline the federal taxable income for it and each subsidiary in accordance with federal tax laws.[2]

Had the Legislature intended to ensure that every credit and deduction was taken strictly by the organization that paid or received funds, it could have included this language in the SBTA. The Legislature did not include such a requirement. Instead, it relied on federal tax law as the starting point, and permitted credits and deductions only to the extent included in the taxpayer's taxable income.

"Tax laws generally will not be extended in scope by implication or forced construction. When there is doubt, tax laws are to be construed in favor of the taxpayer." *Michigan Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 477; 518 NW2d 808 (1994). However, exemptions from tax are not favored and must be construed strictly in favor of the government. *Elias Bros Restaurants, Inc v Dep't of Treasury*, 452 Mich 144, 150; 549 NW2d 838 (1996).

For the foregoing reasons, the Court of Claims erred in concluding that plaintiff was required to include interest in its tax base where the interest was deducted by plaintiff's subsidiaries for federal taxable income purposes. Given this disposition, we need not address the remaining issues.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher

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[2] Although the Legislature provided the definition of "affiliated group," and the qualifications necessary to file a consolidated SBT return, it does not force a parent corporation and its subsidiaries to file a joint return where each organization is a "person" under the Act. MCL 208.3; MCL 208.6. Had the Legislature intended that result, it could have easily included that in the SBTA.